Merit Commissioner

Annual Report 2012/13

UPHOLDING FAIR HIRING IN THE BC PUBLIC SERVICE

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Office of the
Merit Commissioner

The Honourable Linda Reid
Speaker of the Legislative Assembly
Province of British Columbia
Parliament Buildings, Room 207
Victoria, British Columbia V8V 1X4

Dear Madam Speaker:

It is my honour to present the 2012/13 Annual Report of the Merit Commissioner. This report is submitted pursuant to section 5.2 of the *Public Service Act*, Chapter 385 of the Revised Statutes of British Columbia.

As an Officer of the Legislative Assembly, I would be pleased to appear and report further on these matters at the request of the Members of the Legislative Assembly.

Respectfully submitted,

Fiona Spencer

Fiona Spencer
Merit Commissioner

Victoria, British Columbia
August 2013

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Fiona Spencer
Merit Commissioner

Message from the Merit Commissioner

This year I was privileged to be appointed for a second term as Merit Commissioner for British Columbia.

A new term provided the perfect opportunity to take a fresh look at the work of the Office to see how we could improve or streamline processes and enhance products, including this annual report. This document, therefore, is a significant departure from past annual reports in that it provides more of an overview and does not contain the comprehensive analyses and results of the various audits and studies we have conducted throughout the year. By reporting and publishing the complete reports in other ways, such as on our website, we are able to make this report more readable and, hopefully, lead those interested to where more details are available. This is a transitional report, as I plan to table future annual reports in May each year to align our reporting cycle with the budget process and our legislation. These reports will contain information about our activities in the previous fiscal year.

This report takes a brief look at the results of past merit performance audits, staffing reviews, special audits and studies. Of note is that our audits have identified a disappointing downward trend in merit-based hiring. These findings and their underlying issues have prompted us to look for ways to heighten the impact of our work by making changes to our approach to auditing and to reporting intervals. We will also be seeking input from stakeholders with an interest in, or direct influence on, merit-based hiring.

Undertaking employee-requested reviews of staffing decisions will continue to be an important aspect of our work going forward. When employees exercise their rights of recourse and inquiry we view it as a positive indication that information about the review process is available to them and that they work in a supportive environment where they are comfortable raising their questions and concerns.

As we look ahead, we are not only exploring ways to enhance the relevancy of our audit findings, but are also considering where special audits and the study of certain aspects of merit-based hiring may continue to provide insights and lead to progress. Follow-up audits of various appointment types will allow us to determine if past recommendations have been implemented and improvements made. New studies will enlighten us and inform our work.

Once again, I wish to acknowledge the dedication of the staff in my Office and the support of our auditors and the Audit Advisory Committee. Their commitment contributes to improvements in merit-based hiring and I look forward to continuing to work with them in this important role.

Fiona Spencer

Fiona Spencer
Merit Commissioner

The Office of the Merit Commissioner

The Merit Commissioner is appointed by the Legislative Assembly on a part-time basis for a three-year term. The Office of the Merit Commissioner (the Office) is comprised of a small team of core staff complemented by contract auditors. An Audit Advisory Committee meets with the Office periodically to contribute to audit planning, examine issues and provide general advice. Committee members are selected based on their professional qualifications, relevant knowledge about the public service and expertise related to performance audits.

The Office is guided by the principles of fairness and impartiality. We apply to ourselves the same standards of integrity in performance and accountability that we apply to others. All those who contact the Office are treated with respect and can be assured that, if necessary and appropriate, their concerns will remain confidential. We are passionate about our work and understand that a vital part of being independent is to have the courage to deliver facts and recommendations about where improvements are needed, as well as to report on progress and accomplishments.

The Merit Principle

The *Public Service Act*, section 8, states that all appointments to and from within the public service must be based on the principle of merit. Merit is commonly accepted to mean that appointments are based on an assessment of competence and ability to do the job, and are non-partisan. The *Act* sets the factors that must be considered in determining merit including: education, skills, knowledge, experience, past work performance, and years of continuous service in the BC Public Service.

Vision

A professional and non-partisan public service that is hired and promoted on the principle of merit.

Mission

To serve the people of British Columbia through their elected representatives of the Legislative Assembly by monitoring public service appointments to ensure the application of the merit principle in hiring and promotions in the BC Public Service.

Role

The Merit Commissioner provides independent oversight of and insight into the conduct of merit-based hiring in the BC Public Service. The Office achieves this oversight by randomly auditing staffing appointments, conducting special audits and studies, and reviewing appointment decisions upon request by employee applicants. The Office also informs hiring managers, employees and the public of its findings through reports, studies and educational materials, as well as delivers presentations to increase awareness about the value of merit-based hiring practices. The Merit Commissioner reports annually to the Legislative Assembly on the application of the merit principle in the BC Public Service.

Stakeholders

The Office provides oversight to provincial government organizations that have employees appointed under the *Public Service Act* (the *Act*), including: ministries; agencies, boards and commissions; independent offices of the legislature; and the offices of the Courts. A full list of these organizations can be found in Appendix A. We broadly share responsibility for upholding merit-based hiring and promotions in the BC Public Service with our key stakeholders within these organizations as illustrated in Table 1.0.

Table 1.0 – Responsibilities for Merit-based Hiring

BC Public Service Agency Head	Deputy Ministers/ Organization Heads	Hiring Managers	Employees
Sets staffing policy and the accountability framework for human resource management with the Deputy Ministers' Council Provides staffing support and training to client groups Receives, responds and takes action as appropriate on Merit Commissioner's merit performance audits, special audits and summary of staffing review findings, and recommendations Delegates responsibilities for staffing activities to deputy ministers or heads of organizations Authorizes direct appointments	As a Council, carry out the Corporate Human Resource Plan Sub-delegate staffing activities to line managers/supervisors Respond to the second step in a staffing review process Receive and take action as appropriate on Merit Commissioner's audit findings and staffing review decisions Lead and create a culture supportive of merit-based hiring and ensure hiring managers are held accountable	Make merit-based recruitment, selection and appointment decisions Conduct the first step in a staffing review process by providing feedback to applicants	Provide views on merit-based hiring and fair process As applicants, may request staffing reviews of proposed hiring or promotion decisions

The bargaining units that represent most BC Public Service employees, (BC Government and Service Employees' Union [BCGEU], the Professional Employees Association [PEA], and the nurses unions), as well as the BC Excluded Employees' Association, have long records of encouraging and supporting merit-based hiring in the public service.

Oversight and Insight

The Office of the Merit Commissioner has two main lines of business: conducting merit performance and special audits and, on request, reviewing individual staffing decisions.

Merit Performance Audits

The Office monitors the application of the principle of merit by conducting random audits of permanent appointments and temporary appointments greater than seven months. The purpose of the audits is to determine whether recruitment and selection processes were properly applied to result in merit-based appointments, and whether the individuals appointed were qualified.

We carry out the audits in accordance with generally accepted professional audit standards and methodology, work with independent statisticians to ensure rigour and objectivity in obtaining random and representative samples, and incorporate quality assurance reviews into our audit process. Audit findings for each appointment are reported to deputy ministers and heads of organizations as appropriate, and the overall results are provided to the BC Public Service Agency (BCPSA) and made available to the public. These audit findings are a way to recognize and support good hiring practices throughout the BC Public Service, while at the same time holding managers accountable for their practices.

> *Appointments are audited to assess whether processes are transparent and fair, whether the assessment methods used are relevant to the job, and whether reasonable decisions have been made. Legislation and hiring policy and, where applicable, collective agreement requirements are also considered.*

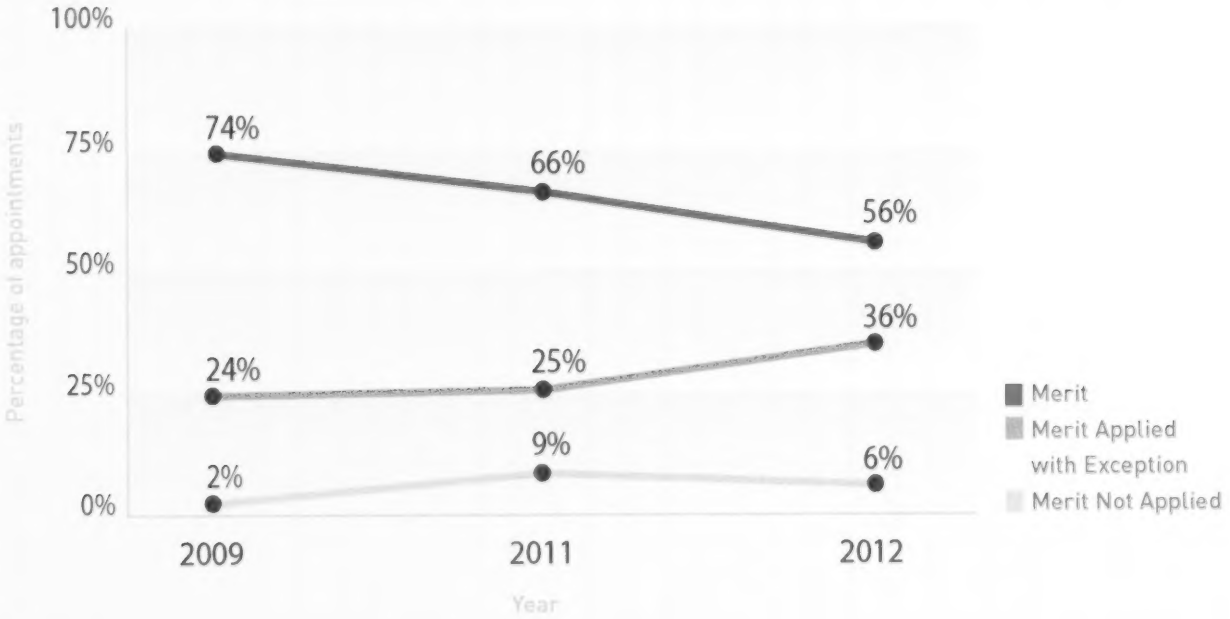
Work to Date

The audit of an individual appointment results in one of the following findings about the competition process.

- **Merit** - the appointment was the result of a merit-based process consistent with the stated selection criteria, was reasonable and relevant, and was based on factors specific to the job.
- **Merit With Exception** - the appointment was considered merit-based but the audit identified issues with either how the process was conducted or with the application of policy or collective agreement provisions.
- **Merit Not Applied** - the appointment was not the result of an open, transparent, fair or reasonable merit-based process or a critical error in the process resulted in an incorrect appointment.
- **Unable To Determine** - there was insufficient evidence and information to draw a conclusion concerning merit.

Since the current Merit Commissioner's initial appointment in 2009, three full-year and one partial-year merit performance audits have been conducted. Almost 1,000 permanent appointments, direct appointments and temporary appointments of more than seven months have been audited. Within these appointments, the number of issues raised about the appointment process has increased, as indicated in Chart 1.0.

Chart 1.0 – Frequency of Findings



Notes:
Percentages have been rounded for ease of reference.
2010 partial-year audit findings are not included.
"Unable to Determine" findings, which have consistently been less than 2 per cent each year, are not included.

Findings of issues or flaws in appointments audited have increased from 26 per cent to 42 per cent, since 2009.

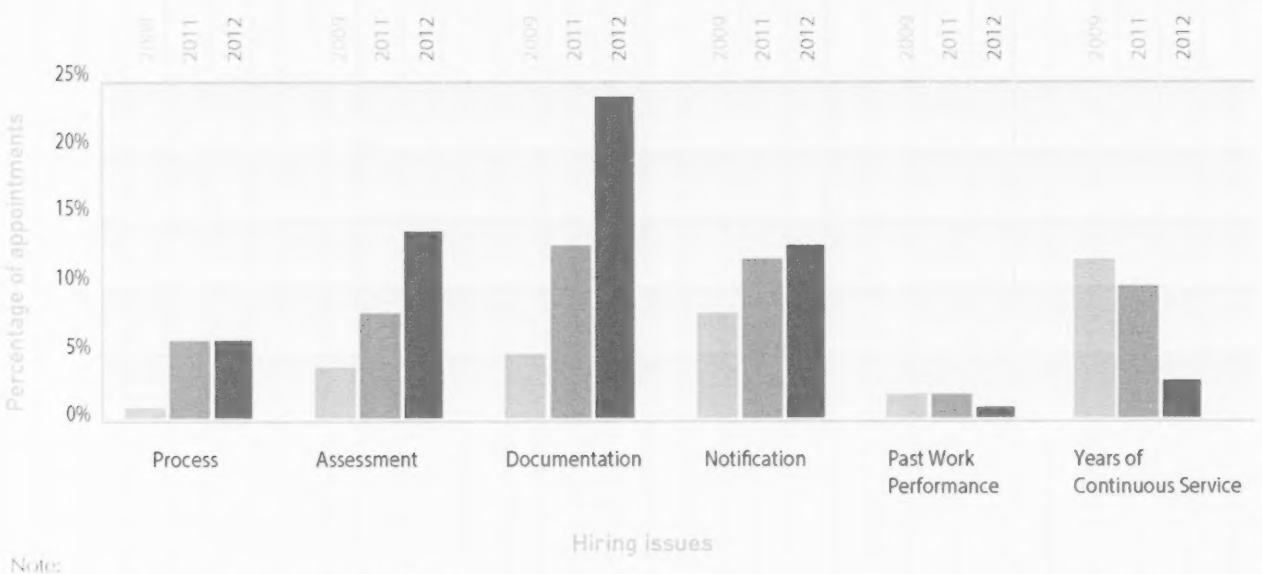
Various hiring issues may lead to a finding of "Merit With Exception" or "Merit Not Applied." These issues fall into six categories: process, assessment, documentation, notification, past work performance, and years of continuous service. A brief description of what the audit considers within each of these categories appears in Table 2.0.

Table 2.0 – Hiring Issues

Category	The audit considers whether:
Process	the overall approach to recruit and select applicants was fair, reasonable and transparent, given the job and its requirements
Assessment	applicants were consistently and appropriately evaluated against job-related criteria and in accordance with the following factors of merit: education, skills, abilities, knowledge and experience
Documentation	there was sufficient documentation to show that process, actions and decisions were transparent, consistent, relevant and reasonable
Notification	employee applicants were notified of the final outcome of the hiring process
Past Work Performance	this factor was properly assessed, including at least one reference from a supervisor, or equivalent
Years of Continuous Service	for all positions this factor was considered, and for BCGEU positions was properly assessed in accordance with the collective agreement

Chart 2.0 shows how often since 2009 each of these categories has been identified in audits resulting in an overall finding of "Merit With Exception" or "Merit Not Applied." For some of the appointments audited, more than one category of issue may have been identified.

Chart 2.0 – Trends in Hiring Issues



Note:
2010 partial-year audit findings are not included.

Documenting Decisions

Documenting the recruitment and selection process and decisions is vital to confirming a credible and transparent merit-based hiring process. It also allows hiring managers to provide quality feedback to employee applicants as required by the staffing review process. An absence of evidence to support the assessment of an applicant can influence that applicant's perception of the fairness of the hiring process. Because hiring activities and appointment decisions also have significant financial implications, hiring managers are required to document them as thoroughly as they would any other business decision with financial implications. Providing evidence for the reasons why a particular decision was made is sound management practice within a public sector context and is expected by the public we serve.

Notification

Notifying applicants of the competition outcome is an important element in establishing a credible and transparent process. While best practice would be to notify all applicants in a hiring process of the result, hiring managers must, at a minimum, inform those applicants who are also employees of the final outcome. In order to initiate the staffing review process, an unsuccessful employee must first receive notification of the proposed appointment decision. If notification of the outcome is not provided, access to that employee's statutory rights under the *Act* is obstructed.

The frequency of issues in the audit findings provides some insight into hiring practices in the BC Public Service over the last four years. Problems with documentation and notification have consistently remained two of the three most prevalent issues. Years of continuous service was the third most prevalent concern until 2011, when it was replaced in 2012 by assessment. Issues with assessment have more than tripled since 2009.

While we continue to be concerned with the general increase in issues and flaws identified in audited appointments, we consider the efforts made by individual organizations and by the BCPSA to be positive steps towards improvement. Each year, the Office advises deputy ministers and heads of organizations of the findings related to audited appointments within their organizations. In response, a number of deputy ministers have indicated that they find these audit results valuable and have committed to improve their organization's staffing practices.

An overall analysis of merit performance audit findings, along with recommendations, is shared each year with the Head of the BCPSA and published in the Office's annual report. Past recommendations from the Merit Commissioner have emphasized the need for continual improvement in three areas: documentation, notification and assessment of years of continuous service. Since 2009, we have observed a number of changes related to hiring processes and systems in the BC Public Service, including:

- increased availability of centralized administrative staffing services for hiring managers such as notifying applicants of the competition outcome and performing calculations to assess years of continuous service;
- improvement in the information available online related to the hiring process and its ease of accessibility; and
- retention of electronic copies of competition files by the BCPSA for ministries and other independent government organizations, as well as increased emphasis on the importance of documentation in hiring materials.

> *Over time, the number of issues found with respect to the assessment of years of continuous service has decreased while the number of issues found related to documentation and notification has increased.*

Work Underway

The results of the 2012 Merit Performance Audit, which examined 228 appointments, are included in Charts 1.0 and 2.0. A detailed analysis of these results, including the identification of general trends and implications is underway. A separate detailed report, including the overall audit analysis and recommendations resulting from the 2012 Merit Performance Audit, will be shared with the Head of the BCPSA and published on our website.

The plan for the 2013 Merit Performance Audit is in place. A partial-year audit will be carried out for appointments made between September and December. Reporting of results will occur frequently to allow for timely feedback to those making hiring decisions. Before the start of the audit we will conduct an in-depth review of our audit approach, processes and systems.

> *Changes are underway to improve the timeliness and relevance of audit results.*

Special Audits and Studies

We conduct a variety of special audits and studies related to merit-based hiring. We also undertake research into significant and/or systemic issues that may come to our attention during audits and reviews, or through feedback received from our stakeholders.

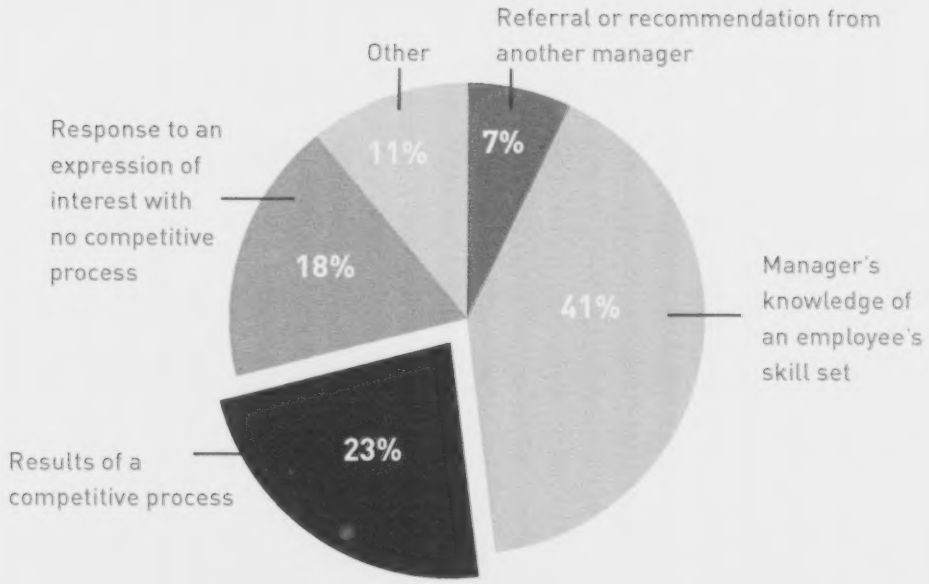
Work to Date

The following highlights are from special audits and studies completed since 2009.

Short-term Temporary Appointments

In 2010, the Office completed an audit of temporary appointments of seven months or less (T<7). Of the T<7 appointments reviewed, 21 per cent had led to assignments continuing longer than seven months, with some ongoing for more than five years. In the 220 cases in which the T<7 appointment continued for longer than one year, the details of the appointment were examined. We found that in only 23 per cent of the T<7 appointments that had continued for one to five years, employees had been selected with the benefit of a merit-based process, as illustrated in Chart 3.0.

Chart 3.0 – Means of Selection - T < 7 Appointments



Further, the audit found that most frequently the employees appointed for T<7 received an advantage if they chose to apply for the position when it was later filled on a permanent basis: in 83 per cent of these cases the temporarily appointed employee was the successful candidate. A number of recommendations were made to address these and other issues, and a follow-up audit is underway.

Lateral Transfers

In 2010 a study was undertaken to determine the extent to which lateral transfer appointments were being correctly categorized. Because appointments considered to be lateral transfers are excluded from oversight by the Merit Commissioner, it is important to know the extent to which other types of appointments may be incorrectly categorized as lateral transfers. The Merit Commissioner determined no further study was required at that time as the analysis found that only 0.8 per cent of appointments had been incorrectly identified as lateral transfers.

Auxiliary Appointments

An auxiliary appointment denotes the short-term assignment of a new external temporary hire or an existing auxiliary employee, to work that is not of a continuous nature. In 2011, a special audit identified 1,887 active auxiliaries, of which 200 were appointments continuing for longer than 12 months without layoff. As Table 3.0 shows, many of the 200 auxiliary appointments continued unbroken for years. The audit found that where the work may conceivably have been continuous in nature, and not short-term, the appointment should have resulted from a process designed to select the most qualified individual to become part of the long-term workforce. The results and conclusions of this audit were published in the 2010/11 Annual Report and the Merit Commissioner is currently considering a follow-up audit to determine if improvements have been made.

Table 3.0 – Auxiliary Appointments by Assignment Length

Assignment Length	Number of Appointments
More than 25 years	1
15 years to 25 years	0
10 years to 15 years	2
5 years to 10 years	36
2 years to 5 years	88
1 year to 2 years	73
Total	**200**

Pool Hiring

In 2012, the Office conducted special audits to determine if the pool hiring processes for both clerical positions and Employment and Assistance Worker (EAW) positions were merit-based. Pool hiring processes differ from traditional hiring processes in that applicants are pre-assessed and only referred to hiring managers for consideration should appropriate vacancies become available. The audits concluded that, in general, the pool hiring processes were reasonable and that the appointments examined were merit-based; however, a number of issues were identified. The Merit Commissioner's key recommendations related to these findings are summarized as:

- selection criteria for each competition and/or job classification should be clearly stated;
- merit-based criteria should be used to short-list and advance candidates;
- all employee applicants should receive proper final notification of results; and
- a comprehensive and effective means of tracking pool applicants should be developed.

Following the completion of these audits, the BCPSA indicated that the use of hiring pool processes had been suspended while a comprehensive redesign of the approach was being completed, and that the Merit Commissioner's recommendations would be considered during that process.

Direct Recruitment

Direct recruitment is a term generally used in the BC Public Service to refer to appointments to entry-level positions made without a full competitive process. In 2012, we examined this practice and found no legal or policy basis which would exempt such appointments from the requirement for a merit-based process, including some form of notice to potential applicants. As a result of these findings, in the future this type of appointment will be subject to the same audit standards for merit-based hiring as other appointment types.

Work Underway

We have several projects currently underway, including those described below.

- As a follow-up to our 2010 audit of short-term temporary appointments, we are conducting a special audit of active **temporary appointments of not more than seven months**. The audit is not only examining whether this type of appointment is being used appropriately, but is also checking to see if changes have been made since our audit three years ago.

- Given the prevalence of competency-based **behavioural interviews** in the BC Public Service and the concerns expressed to us by employees about this interviewing method, we are studying how this approach is being put into practice. The study examines what is needed to properly conduct a behavioural interview and will determine whether the BC Public Service has the essential elements in place.

- In the past, we have identified inconsistencies in out-of-service competitions that are **geographically restricted** with respect to determining the eligibility of applicants. The Office is reviewing the basis for these inconsistencies to determine whether there are issues of fairness and transparency for external and/or internal applicants.

- We are examining whether **employee applicants who are deemed ineligible** for consideration in a competition (e.g., those working outside the stated organizational unit to which a process is restricted) and who are currently not provided with final notification and right of recourse should have such entitlements.

- We are studying if there is a legal and/or policy basis to require some form of **employee authorization** prior to contacting a reference for an assessment of past work performance.

> *The goal of the Merit Commissioner is to influence positive change in the conduct of hiring in the BC Public Service.*

Staffing Reviews

The *Public Service Act* provides employee applicants who are unsuccessful in competitions for permanent appointments or temporary appointments of more than seven months with the right to request a review of the appointment decision. There is a three-step staffing review process, which an employee may initiate when notified of a competition outcome.

Step 1 is **feedback** from the hiring manager.
Step 2 is an **internal inquiry** by the deputy minister or organization head.
Step 3 is a **review** by the Merit Commissioner, if the employee applied to a bargaining unit position.

After conducting an investigation, the Merit Commissioner determines whether the appointment or proposed appointment is based on merit and, if not, may direct that the appointment be reconsidered. The Merit Commissioner's decisions are final and binding.

Work to Date

Over the last several years, the Office has received a relatively small number of requests for review in comparison to the number of appointments made in the BC Public Service. Table 4.0 shows the number of requests received for review each fiscal year since 2009/10, whether the request was eligible for review, and the Merit Commissioner's decision with respect to the process. If the appointment was determined to be merit-based, the Merit Commissioner upheld the appointment decision. If not, a reconsideration of the appointment decision was directed. Generally, the Merit Commissioner's decisions were issued within 30 days following receipt of the documents necessary to conduct the review.

Table 4.0 – Requests for Staffing Reviews

	Review Requests		Merit Commissioner's Decision	
Fiscal Year	Received	Eligible	Appointment upheld	Reconsideration directed
2009/10	6	4	4	0
2010/11	11	7	6	1
2011/12	21	16	13	3
2012/13	7	4	4	0

Several recommendations were made in the Merit Commissioner's 2009/10 Annual Report to address some underlying transparency issues related to the process for review requests. Of note was a recommendation to make improvements in the accessibility of information about the staffing review process and to provide more detail about the steps in the review process and its timelines. Since making these recommendations, we have observed improvements in both of these areas.

In 2011, when the last government-wide Work Environment Survey (WES) was conducted, we noted with interest the low ratings employees assigned to public service staffing practices. These ratings seemed inconsistent with the low number of staffing review requests received. In order to better understand employee concerns in this area, we examined the anonymous comments related to staffing questions. The comments supported the systemic issues already identified for future study by the Office. We also found that many comments related to matters peripheral to merit-based hiring and, that while important, were not within the scope of our work.

While employee reasons for requesting a review have been wide-ranging and cover all aspects of the competition process, the most common themes since 2009 are identified below.

- **Assessment** - which includes inconsistent treatment of applicants during the short-listing, testing or interview process
- Competency-based **behavioural interviewing** - which includes that the panel's evaluation method was flawed, or that insufficient information about the process was provided to candidates before the interview
- One or more **factors of merit were not considered** - where the employee had been eliminated from the competition before the final assessment of past work performance or the consideration of years of continuous service, or where the assessment had taken behavioural competencies into consideration to the exclusion of a candidate's job-related knowledge and skills
- Flaws in the assessment of **past work performance** - where it was not adequately considered or appropriately weighted, where relevant supervisory references were not consulted, or where the assessment did not take into account the employee's performance evaluations
- **Bias** on the part of one or more panel members - usually when a panel member had a personal or a working relationship with the successful candidate
- **Feedback** - usually not clear or not specific enough about why the employee was unsuccessful

Merit-based hiring is:

- A cornerstone of an engaged and productive public service
- An effective tool to recruit and retain talent
- Necessary to build and sustain a qualified and professional workforce
- Critical to credible leadership
- Important to maintain public trust

The majority of the Merit Commissioner's review decisions have upheld the ministry's appointment decisions and found that the proposed appointments were the result of merit-based processes. These decisions were rendered after thoughtful consideration of the employee's concerns and a thorough examination of the hiring process. Much value is gained from this analysis, regardless of the findings of the review, as it ensures that both employees and hiring managers are heard, that complete and detailed findings are provided, and that areas for improvement are identified.

Reasons for review put forward by employees can assist those involved in managing the hiring process to determine where communications or transparency could be improved. These grounds also provide the Office with insight into areas where future audits or studies of specific aspects of the hiring process may be warranted. For example, our current study of competency-based behavioural interviewing was initiated, in part, in response to employee concerns raised through review requests.

Work Underway

An analysis of staffing reviews concluded in 2012/13 is in progress. We will also examine information provided by ministries and independent government organizations (agencies, boards and commissions) with respect to how their organizational cultures are supportive of an employee's right of review. A summary report of our findings will be provided to our stakeholders in the coming months and posted on our website.

Budget

The Office of the Merit Commissioner's operating budget and expenditures for the 2012/13 fiscal year are shown by expenditure type in Table 5.0. The budget was $1,024,000 and total expenditures were under budget by $45,761 or 4.5 per cent.

Table 5.0 – Budget and Expenditures

	2012/13 Approved Budget	2012/13 Actual Expenditures	2013/14 Approved Budget
Salaries & Benefits	$668,000	$626,845	$694,000
Travel	$13,000	$10,781	$13,000
Office Expenses	$268,000	$222,793	$257,000
Professional Services	$75,000	$117,820	$75,000
Total	$1,024,000	$978,239	$1,039,000

On November 14, 2012, the Merit Commissioner met with the Select Standing Committee on Finance and Government Services to review results of the work of the Office over the previous year, to establish priorities for the year ahead, and to review budget requirements for the next three fiscal years. A modest increase to reflect salary and employee benefit costs was approved for 2013/14, for a total operating budget of $1,039,000. Details of this budget allocation are also shown in Table 5.0.

Appendix A

Organizations Subject to Oversight by the Merit Commissioner

(as of March 31, 2013)

Ministries

Aboriginal Relations and Reconciliation
Advanced Education, Innovation and Technology
Agriculture
Children and Family Development
Citizens' Services and Open Government
Community, Sport and Cultural Development
Education
Energy, Mines and Natural Gas
Environment
Finance
Forests, Lands and Natural Resource Operations
Health
Jobs, Tourism and Skills Training
Justice
Social Development
Transportation and Infrastructure

Independent Offices

Auditor General
Elections BC
Information and Privacy Commissioner
Merit Commissioner
Ombudsperson
Police Complaint Commissioner
Representative for Children and Youth

Courts of British Columbia

Provincial Court of BC
Supreme Court of BC
BC Court of Appeal

Other Public Sector Organizations

Agricultural Land Commission
Auditor General for Local Government
BC Human Rights Tribunal
BC Pension Corporation
BC Public Service Agency
BC Review Board
Broadmead Care Society
Community Care and Assisted Living Appeal Board
Destination BC
Employment and Assistance Appeal Tribunal
Environmental Appeal Board
Financial Institutions Commission
Financial Services Tribunal
Forensic Psychiatric Services Commission
Forest Appeals Commission
Forest Practices Board
Health Professions Review Board
Hospital Appeal Board
Independent Investigations Office
Islands Trust
Oak Bay Lodge Continuing Care Society
Office of the Premier
Oil and Gas Appeal Tribunal
Property Assessment Appeal Board
Provincial Capital Commission
Public Guardian and Trustee
Public Sector Employers' Council Secretariat
Royal BC Museum
Safety Standards Appeal Board
Surface Rights Board

Merit Commissioner

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